



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV - 6 2009

Jim Kavanaugh, Director
Air Pollution Control Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Re: Notice of Violation to Silgan Containers, LLC

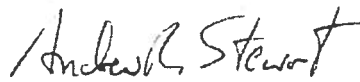
Dear Mr. Kavanaugh:

The purpose of this letter is to notify you that the United States Environmental Protection Agency (EPA) is proposing to resolve potential violations of Section 110 of the Clean Air Act (CAA), 42 U.S.C. § 7410, and the Missouri State Implementation Plan (SIP) in a settlement with Silgan Containers, LLC (Silgan) to be filed in the U.S. District Court for the Eastern District of Wisconsin. This notice is given pursuant to Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), which requires EPA to notify the person found to be in violation of any requirement of a SIP and the state in which the plan applies of such finding no less than 30 days prior to taking action.

Enclosed please find a Notice of Violation (NOV) issued this day to Silgan for violations of the CAA at its facilities located in St. Joseph and Mt. Vernon, Missouri. On October 15, 1999, Silgan agreed to conduct an audit and voluntarily disclose any CAA violations identified under the audit at its domestic facilities. The enclosed NOV details the violations to be resolved in the settlement.

Should you have any questions about this matter, please contact me at (202) 564-4387, or have your staff contact Phil Milton at (202) 564-5029, Jeanne Duross at (202) 564-6595 or Peter W. Moore at (202) 564-6014.

Sincerely,

for 
Bernadette Rappold, Director
Special Litigation and Projects Division
Office of Civil Enforcement

Enclosure

cc: Lisa Hanlon
EPA Region 7
901 N. 5th Street
Kansas City, KS 66101

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

**Silgan Containers, LLC
21800 Oxnard St.
Suite 600
Woodland Hills, CA 91367**

Re: St. Joseph and Mt. Vernon, Missouri Facilities

I. STATUTORY AUTHORITY

This Notice of Violation (NOV) is issued pursuant to Section 113(a)(1) of the Clean Air Act (the Act), 42 U.S.C. § 7413(a)(1), to Silgan Containers, LLC (Silgan) for violations of 40 C.F.R. Part 52 and the federally enforceable Missouri State Implementation Plan (SIP) at its facilities located in St. Joseph and Mt. Vernon, Missouri (the Facilities). Section 113(a)(1) of the Act requires the Administrator of the United States Environmental Protection Agency (EPA) to notify a person in violation of a state implementation plan or permit of the violation. The authority to issue NOV's has been delegated to the undersigned.

II. APPLICABLE STATUTES AND REGULATIONS

1. EPA is authorized by Section 113 of the Act, 42 U.S.C. § 7413, to take action to ensure that air pollution sources comply with all federally applicable air pollution control requirements. These include requirements promulgated by EPA and those contained in federally enforceable SIPs or permits.
2. Silgan, a Connecticut corporation engaged in the manufacture of metal food packaging, is a "person" as defined by Section 302(e) of the Act, 42 U.S.C. § 7602(e).
3. On May 9, 1980, 45 Fed. Reg. 30,626, pursuant to Section 110(a) of the Act, 42 U.S.C. § 7410(a), EPA approved the SIP for Missouri (40 C.F.R. § 52.1320), including Missouri Code of State Regulations (CSR) Title 10 CSR 10-6.060 (*i.e.*, pertaining to construction permits requirement), which approval became effective on May 9, 1980. The Missouri regulations codified at Title 10 CSR 10-6.060 are federally enforceable pursuant to Section 113(a)(1).
4. Title 10 CSR 10-6.060(8) prohibits the construction or reconstruction of a major source without emission control equipment, including the best available control technology (BACT), if the permitting authority deems necessary the utilization of such technology. Silgan's St. Joseph facility is subject to Title 10 CSR 10-6.060(8).

5. Title 10 CSR 10-6.060(5) requires a *de minimis* permit for any construction or modification at any installation which results in a net emissions increase below the *de minimis* levels. Silgan's St. Joseph and Mt. Vernon facilities are subject to Title 10 CSR 10-6.060(5).
6. On April 17, 1986, 51 Fed. Reg. 13,000, pursuant to Section 110(a) of the Act, 42 U.S.C. § 7410(a), EPA approved the SIP for Missouri (40 C.F.R. § 52.1320), which includes Title 10 CSR 10-6.110 (*i.e.*, pertaining to submission of emission data, emission fees and process information), which approval became effective on May 19, 1986. The Missouri regulations codified at Title 10 CSR 10-6.110 are federally enforceable pursuant to Section 113(a)(1).
7. Title 10 CSR 10-6.110 requires the owner or operator of an installation that is a source of an air contaminant to report emissions data to the director and pay an annual emission fee per ton of regulated air pollutant.
8. Title 10 CSR 10-6.110 requires the owner or operator of an installation that is a source of an air contaminant to include in the Emissions Inventory Questionnaires the amounts of all solvents consumed and all solvents stored in tanks or storage piles which emit any regulated air pollutant. Silgan's St. Joseph and Mt. Vernon facilities are subject to Title 10 CSR 10-6.110.
9. 40 C.F.R. § 52.21(a)(2)(iii) states that no new major stationary source or major modification shall begin actual construction without a permit.

III. FINDINGS

10. On October 15, 1999, EPA and Silgan entered into a Final Audit Agreement under which Silgan conducted a comprehensive, nationwide air regulatory audit of its can manufacturing facilities to evaluate compliance with: (1) Prevention of Significant Deterioration/New Source Review (PSD/NSR) requirements; (2) other federal, state, and local (non-PSD/NSR) air pollution control regulations; and (3) existing permits.
11. Following submission of an Audit Report by Silgan, and pursuant to subsequent EPA requests for additional information, Silgan submitted materials regarding the audit and detailed information regarding its CAA compliance for each disclosed violation. This information will be referred to herein as the Information Request Response.
12. Based on information provided to EPA by Silgan in the Information Request Response, from November 1989 to March 15, 1999, Silgan modified a drawn and ironed (D&I) line at the St. Joseph facility without installing PSD-required BACT.

13. Based on information provided to EPA by Silgan in the Information Request Response, on March 15, 1999, Silgan applied to install BACT on the D&I line at the St. Joseph facility. Silgan installed BACT in January 2001.
14. Based on information provided to EPA by Silgan in the Information Request Response, between July 1992 and July 1993, Silgan installed an aluminum end line at the St. Joseph facility without installing PSD-required BACT.
15. Based on information provided to EPA by Silgan in the Information Request Response, by July 1993, Silgan met BACT on the aluminum end line by using low-content VOC compounds.
16. Based on information provided to EPA by Silgan in the Information Request Response, on March 15, 1999, Silgan applied to install BACT on the aluminum end line at the St. Joseph facility. Silgan installed BACT in January 2001.
17. Based on information provided to EPA by Silgan in the Information Request Response, between July 1996 and March 15, 1999, Silgan modified the D&I line when it upgraded the copper drive, clutch and brake assembly at the St. Joseph facility without installing PSD-required BACT.
18. Based on information provided to EPA by Silgan in the Information Request Response, on March 15, 1999, Silgan applied to install BACT on the upgrade/modifications to the D&I line. Silgan installed BACT in January 2001.
19. Based on information provided to EPA by Silgan in the Information Request Response, between December 2000 and January 2001, Silgan modified the D&I line by replacing two trimmers at the St. Joseph facility without installing PSD-required BACT.
20. Based on information provided to EPA by Silgan in the Information Request Response, on March 15, 1999, Silgan applied to install BACT on the modifications to the D&I line at the St. Joseph facility. Silgan installed BACT in January 2001.
21. Based on information provided to EPA by Silgan in the Information Request Response, between January 1989 and December 1996 and for the calendar year 1998, at the St. Joseph facility, Silgan under-reported VOC emissions data and fees submitted to the state.
22. Based on information provided to EPA by Silgan in the Information Request Response, Silgan could not correct the historical under-reporting due to inadequacy of historical information. Silgan has accurately reported its VOC emissions data and paid fees since 1999.

23. Based on information provided to EPA by Silgan in the Information Request Response, in 1991, in 1994-95, in 1996, and in 1998-99, Silgan failed to obtain *de minimis* permits for several minor changes at the St. Joseph facility.
24. On May 4, 2004, Silgan received a *de minimis* permit to include each of the modifications or installations referred to in Paragraph 23.
25. Based on information provided to EPA by Silgan in the Information Request Response, in July 1998, Silgan modified Can Line No. 1 at the Mt. Vernon facility without obtaining a *de minimis* permit.
26. Based on information provided to EPA by Silgan in the Information Request Response, from 1984 to February 20, 2006, Silgan, at the Mt. Vernon facility, failed to account for use of solvent-based lubricants in the annual Emissions Inventory Questionnaires submitted to the MDNR.

IV. VIOLATIONS

27. Wherefore, Silgan is found to be in violation of 40 C.F.R. § 52.21 and the federally enforceable Missouri SIP for:
 - A. Failure, from November 1989 to March 15, 1999, to install PSD-required BACT when modifying a D&I line at the St. Joseph facility;
 - B. Failure, from July 1992 to July 1993, to install PSD-required BACT when installing an aluminum end line at the St. Joseph facility;
 - C. Failure, from July 1996 and March 15, 1999, to install PSD-required BACT when it modified the D&I line by upgrading the copper drive, clutch and brake assembly at the St. Joseph facility;
 - D. Failure, from July 1996 to March 15, 1999, to install PSD-required BACT when modifying the D&I line by replacing two trimmers at the St. Joseph facility;
 - E. Failure, from January 1989 to December 1996 and January 1998 to December 31, 1998, to report all VOC emissions data and pay all corresponding fees to the State of Missouri at the St. Joseph facility;
 - F. Failure, in 1991, from 1994 through 1995, in 1996, and from 1998 through 1999, to obtain *de minimis* permits for several minor changes at the St. Joseph facility;
 - G. Failure, in July 1998, to obtain a *de minimis* permit for modification of Can Line No. 1 at the Mt. Vernon facility; and

- H. Failure, from 1984 to February 20, 2006, to account for use of solvent-based lubricants in the annual Emissions Inventory Questionnaires submitted to the MDNR at the Mt. Vernon facility.

V. ENFORCEMENT

28. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, provide that at any time after the expiration of 30 days following the date on which an NOV is issued, the Administrator of EPA, or an EPA official authorized to act as her representative, may, without regard to the period of violation (subject to 28 U.S.C. § 2462):
- A. issue an order requiring the person to comply with the requirements or prohibitions of the applicable implementation plan or permit,
 - B. issue an administrative penalty order in accordance with Section 113(d) of the Act, 42 U.S.C. § 7413(d), assessing civil administrative penalties of up to \$25,000 per day for each violation occurring through January 30, 1997, or \$27,500 per day for each violation occurring after January 30, 1997 through March 15, 2004, or up to \$32,500 per day for each violation occurring after March 15, 2004 through January 12, 2009, or up to \$37,500 per day for each violation occurring after January 12, 2009, up to the date of judgment herein, or
 - C. bring a civil action in accordance with Section 113(b) of the Act, 42 U.S.C. § 7413(b), for a permanent or temporary injunction, or to assess and recover civil penalties of up to \$25,000 per day for each violation occurring through January 30, 1997, or \$27,500 per day for each violation occurring after January 30, 1997 through March 15, 2004, or up to \$32,500 per day for each violation occurring after March 15, 2004 through January 12, 2009, or up to \$37,500 per day for each violation occurring after January 12, 2009, up to the date of judgment herein.
29. In addition, Section 113(c) of the Act, 42 U.S.C. § 7413(c), provides for criminal fines or imprisonment, or both, for any person who knowingly violates, among other provisions, any requirement or prohibition of an applicable implementation plan more than 30 days after an NOV has been issued to such person under Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1).
30. Further, under Section 306 of the Act, 42 U.S.C. § 7606, Executive Order 11738 of September 10, 1973, 38 Fed. Reg. 28,161, and regulations codified at 40 C.F.R. Part 15, facilities at which violations of Act requirements occur may be precluded from 1) performing, in whole or in part, any contracts entered into with a federal agency, and/or

2) receiving or otherwise benefitting from any federal assistance extended by way of grant, loan, or contract.

VI. PENALTY ASSESSMENT CRITERIA

31. Section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), provides that, in determining the amount of any penalty to be assessed under Section 113 of the Act, 42 U.S.C. § 7413, the Administrator of EPA or the court, as appropriate, shall take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.
32. Section 113(e)(2) of the Act, 42 U.S.C. § 7413(e)(2), allows the court to assess a penalty for each day of violation, and further provides that, for purposes of determining the number of days of violation, where the Administrator of EPA or an air pollution control agency has notified the source of the violation, and makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of the notice, the days of violation shall be presumed to include the date of the notice and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.
33. Silgan may, upon request, confer with EPA concerning this NOV. If Silgan requests a conference with EPA, Silgan should be prepared to describe the cause(s) of each violation, and any action(s) which Silgan took at the time, has taken subsequently, or would propose to take in the future, to address each violation or prevent future violations. If a conference is requested, Silgan has the right to be represented by counsel at such conference.
34. Silgan must submit any request for a conference with EPA within 10 business days of Silgan's receipt of this NOV. A request for a conference with EPA, and/or any inquiries regarding this NOV, should be submitted in writing to:

Peter W. Moore, Esq.
Ariel Rios Building -- Room 3150
Special Litigation and Projects Division (2248A)
Office of Civil Enforcement
U. S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460

35. If you have any technical questions regarding the violations cited herein, you may call Philip Milton, Chemical Engineer, of my staff at (202) 564-5029. Legal or other inquiries concerning this NOV may be made to Peter Moore at (202) 564-6014.

VII. EFFECTIVE DATE

36. This NOV shall be effective immediately upon receipt.

for Andrew R. Stewart
Bernadette Rappold
Director
Special Litigation and Projects Division
Office of Civil Enforcement

11/6/08
Date

